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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT

v.

ERNEST KING BRAMBLETT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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a construction of the statute upon which it is founded is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether the Disbursing Office of the House of Representatives is a "department or agency" within the meaning of 18 U. S. C. 1001, which forbids the wilful falsification by a scheme of a material fact "in any matter within the jurisdiction of any department or agency of the United States."

STATUTE INVOLVED

18 U. S. C. 1001, 62 Stat. 749, provides:[1]

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

On November 10, 1953, an indictment in eighteen counts charging violations of 18 U. S. C. 1001 was returned against appellee in the United States District Court for the District of Columbia. Each count charged that appellee, in a

[1] Predecessor statutes are set forth in the Appendix, *infra*.

matter within the jurisdiction of a department and agency of the United States, namely, the Disbursing Office of the House of Representatives, wilfully falsified by a scheme a material fact. The scheme alleged was that appellee, while a member of the House of Representatives, presented to the Disbursing Office of the House a clerk-hire allowance form in which he represented that a person named therein was his clerk and that he thereafter allowed the Disbursing Office to issue salary checks to such person at the close of each pay period, whereas the person so designated, to whom the salary checks were made payable, was not in fact a clerk to appellee, as appellee well knew. By this means appellee was able to convert to his own use the compensation paid to such clerk. (R. 1–8.)

At the close of the Government's case, the trial court granted appellee's motion for acquittal as to counts eight through eighteen, inclusive, and denied it as to counts one through seven, inclusive. The court submitted these seven counts to the jury, which returned a verdict of guilty (R. 22). Appellee filed a motion in arrest of judgment or, in the alternative, for a judgment of acquittal or new trial (R. 8–9). The court denied the motions for acquittal and a new trial but granted the motion in arrest of judgment (R. 20), stating that it had reasonable doubt as to whether the Disbursing Office of the House of Representatives is a "department or agency" of the United States

within the purview of 18 U. S. C. 1001 and that it would resolve this doubt in appellee's favor (R. 19).

SUMMARY OF ARGUMENT

I

The protection of the funds which the United States holds in public trust is a matter patently within the jurisdiction of the United States, and a scheme to deprive the Government of its substance by false representations of material facts made to a federal disbursing agency provides a classic example of the vice at which the federal false-statements statute is aimed.

The term "department or agency of the United States," as it appears in 18 U. S. C. 1001, is used in its broad generic sense and covers all agencies of government, at least insofar as they act in an administrative, a fiduciary, or a housekeeping capacity. The definition of "agency" in 18 U. S. C. 6—the general definition for the Criminal Code—shows a design to throw a protective blanket over all administrative or managerial functions of government, and refutes the notion that Congress meant to cover only those agencies within the executive branch. Certainly, the words "authority * * * of the United States" contained in that definition are broad enough to cover any disbursing office of the United States.

That the Disbursing Office of the House of Representatives is in every sense a United States

agency is shown by the following facts: the Disbursing Officer is under a statutory duty to post a fidelity bond with the Secretary of the Treasury; he is authorized to draw checks upon the Treasury of the United States; and the books of the office are subject to audit in the same manner as those of other federal disbursing agencies.

The case law fully supports the view that the false-statements Act is not to be restricted to false representations made to agencies within the executive branch. In *Romney* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, which arose under a statute which is the immediate precursor of 18 U. S. C. 1001 and which likewise made violation depend on whether the matter was one "within the jurisdiction of any department or agency of the United States," the court of appeals sustained the conviction of a sergeant at arms of the House of Representative who submitted falsified statements to the General Accounting Office, an arm of Congress. In *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, this Court construed an earlier statute relating to false claims and false statements as applying to a claim lodged with a local municipal officer, although the statute in terms related to presentation to officers of the United States of false claims against the United States. The Court so held because the federal government had made contribution by grants-in-aid to the fund out of which the claim was to be

satisfied; because the manifest purpose of the Act was "to provide protection against those who would 'cheat the United States' "; and because the safeguard for federal funds provided by the law was not to be deemed "dependent upon the bookkeeping devices used for their distribution." A *fortiori*, the present statute must be construed to cover a false statement presented to an agency which is a duly constituted organ of the federal establishment, regularly disbursing monies drawn from the Treasury of the United States.

II

The historical evolution of the statute fortifies the interpretation of its language as embracing agencies of the Government which are not within (or exclusively within) the executive branch, and in particular as embracing all agencies which handle funds of the United States. The history of the statute is one of constant expansion to encompass frauds upon the Government, especially frauds upon the federal revenue. *United States ex rel. Marcus* v. *Hess, supra.*

The original Act of March 2, 1863, while limited to persons in the land or naval forces, punished any fraudulent "claim upon or against the Government of the United States, or any department or officer thereof" filed with "any person or officer in the civil or military service of the United States." This clearly comprehended all departments or agencies of Government. The

Act also punished any false statement for the purpose of obtaining approval of "such claim."

In 1873 the statute was expanded to make it apply to "every person" (not merely those in the armed forces) who filed a false claim (or who made false statements and entries in connection therewith) with any person or officer "in the civil, military, or naval service." The 1873 Act was held applicable to a false claim and accompanying statements submitted to a federal district court. *United States* v. *Strobach*, 48 Fed. 902 (C. C. M. D. Ala.).

In 1918 Congress added the language, "knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations," the language of present 18 U. S. C. 1001 with which we are here concerned. This language in the 1918 Act applied to such representations when made "for the purpose of obtaining or aiding to obtain the payment or approval of such claim" (*i. e.*, a claim presented to any person or officer in the service of the Government) or "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States or any department thereof." This language clearly punished any falsification in connection with a claim against the United States, no matter the federal official to whom it was addressed.

The language relating to concealment by trick, scheme, or device and to false or fraudulent statements was unchanged by the 1934 amendment. However, the language was no longer made referable to the purposes described in the 1918 Act, *i. e.*, for the purpose of obtaining payment of a claim or the purpose of cheating and swindling. Instead, it was made referable to "any matter within the jurisdiction of any department or agency of the United States." The deletion of the cross-reference between false statements and false claims did not represent an intent to narrow the coverage of the statute. It merely reflected the explicit Congressional intent to *broaden* the false-statement provision to cover, additionally, *non-monetary* frauds, such as those which had arisen in connection with "hot oil." The omission of the term "such claim" necessitated an independent subject-matter description to show the coverage of the false-statement prohibition. There is nothing on the face of the new phraseology—"in any matter within the jurisdiction of any department or agency of the United States"—or in the committee reports or debates in Congress to indicate that this language was intended to leave the federal treasury unprotected from falsifications and schemes perpetrated through an agency of government outside the executive branch.

In the 1948 revision of the Criminal Code, the prohibitions on false claims and on false state-

ments were made the subject of separate sections, but there is absolutely no indication that the revisers intended to make the slightest change in the substance or policy of either one. Accordingly, section 6 of the 1948 revision (which undertook to define "department" and "agency" for purposes of some 71 different statutes) should not be narrowly read to create an unforeseen and unintended result.

ARGUMENT

I

THE DISBURSING OFFICE OF THE HOUSE OF REPRESENTATIVES IS A "DEPARTMENT OR AGENCY OF THE UNITED STATES," AND FALSE STATEMENTS MADE TO THAT AGENCY OF THE GOVERNMENT ARE WITHIN THE AMBIT OF 18 U. S. C. 1001

Factually, this case involves a scheme to cheat the United States of its substance by false representations. Nothing could be more obviously or directly within the jurisdiction of the United States than the protection of the funds which it holds in public trust. And it is eminently plain from the history of the various false-claims and false-statements statutes which Congress has enacted from time to time that a dominant (though not exclusive) purpose of such legislation has been to protect the federal treasury from improper diversions of money in connection with any and all of those manifold fiduciary and housekeeping functions which the Government necessarily performs. See discussion of legislative history, Point II, *infra*.

But while appellee fully concedes, as he must, that the safeguard of public money is a matter within the jurisdiction of the United States, he argues that the statutory language ("within the jurisdiction of any department or agency of the United States") is narrower, and that "department or agency" should be limited to organs of the executive branch and hence not deemed to cover the Disbursing Office of the House of Representatives. It is the Government's position, on the other hand, that those terms, particularly the term "agency", are used in their broad generic sense to cover all agencies of government, at least insofar as they act in an administrative, a fiduciary, or a housekeeping capacity, and that so long as they are agencies acting in that capacity and dispensing monies of the United States it is immaterial whether they are answerable to the President (as in the case of the traditional executive departments) or to Congress (as in the case of such agencies of government as the General Accounting Office or the House Disbursing Office).[8] In our view, it would be a mutilating construction of the Act to make its incidence depend on whether a United States

[8] We do not argue that this section, which deals with cheating the Government, applies to false testimony before Congress or its committees, when Congress is acting in a legislative capacity. There is therefore no foundation to the fear expressed in appellee's motion to affirm (pp. 12-13) that the Government's construction would result in supersedure of the perjury laws.

disbursing agency to which a false representation is made sits at one end of Pennsylvania Avenue or the other.

The terms "department" and "agency" are not defined in 18 U. S. C. 1001 or in predecessor statutes. During the general revision of the Criminal Code in 1948, however, Congress adopted 18 U. S. C. 6, which provides:

> As used in this title:
>
> The term "department" means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.[5]
>
> The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context

---

[5] The executive departments enumerated in section 1 of Title 5, as amended, include:

The Department of State
The Department of Defense
The Department of the Treasury
The Department of Justice
The Post Office Department
The Department of the Interior
The Department of Agriculture
The Department of Commerce
The Department of Labor
The Department of Health, Education, and Welfare

shows that such term was intended to be used in a more limited sense.'

The definition of "agency" is one of broad sweep. It shows, on the face of it, a design to throw a protective blanket over all administrative functions of government. That the revisers meant to use the term "agency" in its general sense, and not as a narrow term of art, is further emphasized by the concluding clause, "unless the context shows that such term was intended to be used in a more limited sense."

Certainly, the definition precludes the view that Congress meant to cover only those governmental units which are subordinate and responsible to the Chief Executive. Congress was well aware that many establishments, commissions, administrations, authorities, boards and bureaus of the United States perform quasi-legislative and quasi-judicial duties and cannot be deemed purely executive agencies under the complete control and command of the President. See *Humphrey's Executor* v. *United States*, 295 U. S. 602, 625, holding the Federal Trade Commission "inde-

[1] The Revisers Note to 18 U. S. C. 6 states: "This section defines the terms 'department' and 'agency' of the United States. The word 'department' appears 57 times in title 18, U. S. C., 1940 ed., and the word 'agency' 14 times. It was considered necessary to define clearly these words in order to avoid possible litigation as to the scope or coverage of a given section containing such words. (See *United States* v. *Germaine*, 1878, 99 U. S. 508, 25 L. ed. 482, for definition of words 'department' or 'head of department.')" House Report No. 304, 80th Cong., 1st Sess. (1947).

pendent of executive authority, *except in its selection* * * *." It knew that other agencies, such as the General Accounting Office, are made independent of the Executive Department by express statutory provision.[5]

While the Disbursing Officer of the House is subordinate to the Clerk of the House, who in turn is directly responsible to the members of the House, it does not follow that he is any less an agent of the United States than other officials who occupy fiduciary posts and handle public monies. Thus, he is under a duty to execute a fidelity bond and to file it with the Secretary of the Treasury (see 2 U. S. C. 75); he draws checks upon the Treasury of the United States; he makes periodic accountings of his funds to the General Accounting Office and submits to the regular audits of that Office. (R. 24–26.)

Appellee suggests, however, that even if the Disbursing Office might be deemed an "agency," if that term stood undefined, the statutory definition in section 6 fails to cover it.[6] To this there are several answers. In the first place, as argued above, the enumeration of the various types of governmental agencies in the definition unmistakably manifests a purpose to cover all governmental agencies performing administrative func-

[5] As to the status of the General Accounting Office, see Act of June 10, 1921, c. 18, section 301, 42 Stat. 23, 31 U. S. C. 41.

[6] See respondent's discussion of *Romero* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, Motion to Affirm, p. 9.

tions irrespective of the branch (or branches) of government to which they may be thought to belong. Secondly, if it be deemed essential to rely upon specific words in the definition, the words "authority * * * of the United States" are plainly broad enough to cover any disbursing office of the United States. Thirdly (as we show under Point II below), the revisers who formulated the definitions appearing in section 6 had no intent to change any of the substantive provisions of the Criminal Code, and the legislative history of section 1001 and antecedent statutes supports the view that there is no warrant for restricting the concept "agency of the United States," as used in section 1001, to agencies of the United States within the executive branch of the Government. Finally, the relevant case law similarly supports this view.

While no cases involving the question at issue have been decided since the 1948 revision, two cases—one arising under a predecessor statute and another under a closely related statute—are closely in point.

In *Romney* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, the Government indicted the Sergeant at Arms of the House of Representatives under 18 U. S. C. (1946 ed.) 80 (Appendix, *infra*, p. 34), the immediate precursor of 18 U. S. C. 1001. The basis of the charge was that the Sergeant at Arms made false financial statements and concealed a short-

age by trick, scheme, and device in rendering reports to the General Accounting Office. The statutory language, like that in the instant case, made violation depend on whether the matter was one "within the jurisdiction of any department or agency of the United States." In sustaining the conviction, the court of appeals necessarily determined, albeit *sub silentio,* that an arm of the Congress, the General Accounting Office, was an agency of the United States within the statutory terms.

In *United States ex rel. Marcus* v. *Hess,* 317 U. S. 537, this Court, reviewing a *qui tam* action brought under R. S. §§ 3490–3493, had occasion to examine R. S. § 5438 as it applied to the presentation of false claims.[7] The respondent contractors had previously been indicted for violating R. S. § 5438 in that they had collusively rigged bids and obtained construction contracts, let by municipalities and school districts in Allegheny County, Pennsylvania, which were to be paid by the state from a joint fund to which the Public Works Administration had contributed.

[7] The pertinent language of section 5438 reads:

"Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, * * *."

For the full text, see Appendix, *infra,* pp. 28–30.

They had pleaded *nolo contendere* and fines had been imposed. In the *qui tam* proceeding, the district court, construing section 5438 with "utter strictness," held that the claims were against the local municipalities and not against the United States. This Court, noting that section 5438 was criminal and to be given "careful scrutiny," nonetheless rejected the lower court's interpretation and looked behind the status of the paying officer, the municipal official, to the source of the money paid, the Treasury of the United States. The Court declared (p. 544):

> Government money is as truly expended whether by checks drawn directly against the Treasury to the ultimate recipient or by grants in aid to states. While at the time of the passage of the original 1863 Act, federal aid to states consisted primarily of land grants, in subsequent years the state aid program has grown so that in 1941 approximately 10% of all federal money was distributed in this form. These funds are as much in need of protection from fraudulent claims as any other federal money, and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution. The Senatorial sponsor of this bill broadly asserted that its object was to provide protection against those who would "cheat the United States." The fraud here could not have been any more of an effort to cheat the United

States if there had been no state intermediary.

There is at least equally good reason in this case to look beyond the Disbursing Office of the House of Representatives and to take account of the fact that it was the Treasury of the United States which was bearing the entire loss resulting from the falsifications. The money in the public treasury appropriated for congressional expenses is entitled to no less protection than money appropriated to other branches or for other purposes. And the safeguard of these public funds should not be made to depend upon the bookkeeping arrangements under which the disbursements are made.

II

THE LEGISLATIVE HISTORY OF 18 U. S. C. 1001 SUPPORTS THE VIEW THAT THE TERMS "DEPARTMENT" AND "AGENCY" ARE NOT LIMITED TO THE EXECUTIVE BRANCH OF THE GOVERNMENT

The historical evolution of the statute fortifies the interpretation of its language as embracing agencies of the government which are not purely subordinate to the executive branch, and in particular as embracing all agencies which handle funds of the United States. The history of the statute is one of constant expansion to encompass frauds upon the government, especially frauds upon the federal revenue.

Although Section 1001 acquired its present form in the general revision of the Criminal Code

in 1948 (Act of June 25, 1948, c. 645, 62 Stat. 683, 749), it had its genesis as far back as the Act of March 2, 1863, 12 Stat. 696, entitled "An Act to prevent and punish Frauds upon the Government of the United States."[8] While the 1863 Act was limited in application to "any person in the land or naval forces of the United States, or in the militia in actual service of the United States, in time of war," the protection was against any false, fictitious, or fraudulent "claim upon or against the Government of the United States or any department or officer thereof,"—clearly inclusive of all components of the Government. The breadth of the coverage is confirmed by the fact that it prohibited the group named from filing such false claims with "any person or officer in the civil or military service of the United States." And similarly the second clause of the Act of 1863 prohibited the making of any "false or fraudulent statement or entry" for the purpose of obtaining approval or payment of "such claim". Thus, as to the persons subject to the interdiction of the statute, the Act of 1863 prohibited the presentation of any false claim or any false statement in connection with such claim to any person or officer of the Government.

[8] The complete text of the Act of March 2, 1863, and of the other acts, hereinafter referred to, which comprise the significant legislative antecedents of 18 U. S. C. 1001, are set forth in the Appendix.

The Act of 1863 relative to false claims and false statements became Section 5438* of the Revised Statutes under the codification of December 1, 1873. The statute was there expanded to make the prohibition apply to "every person" and not merely to those in the land or naval forces or the military service of the United States, but the protection was still against the filing of a false, fictitious, or fraudulent claim upon "the Government of the United States, or any department or officer thereof" with any "person or officer in the civil, military, or naval service of the United States." The prohibitions of section 5438 against false statements and entries in connection with claims were in the same broad terms, applying to all parts of the Government. The statute was so interpreted by the courts. In *United States v. Strobach*, 48 Fed 902 (C. C. M. D. Ala.), involving a charge that defendant had presented a false claim to a marshal and caused the marshal to present the false claim to the district court for approval, and had used false affidavits to obtain the payment of the false claim, the defendant demurred to the indictment on the ground that the judge of the district court was not a person or officer in the civil service of the United States within the meaning of section 5438. Overruling the demurrer on this point, the court said (at p. 908):

> * * * We think that a United States judge is at all times an officer in the civil

* See Appendix, pp. 28–30.

> service of the United States, within the meaning of the statute, and that when a claim is presented to a court of which he is the presiding officer, it is presented to an officer in the civil service of the United States.

When Congress, in 1909, passed "An Act To codify, revise, and amend the penal laws of the United States", it redesignated section 5438 of the Revised Statutes as section 35 without making any significant change in its text. The scope of the prohibition against false claims and false statements relating to claims remained as broad and sweeping as they were under the original Act of 1863.[1]

In 1948 Congress passed "An Act To amend section thirty-five of the Criminal Code of the United States"[2] which significantly changed the language of section 35. Though the avowed purpose of this amendment was to extend the prohibitions of the section to include false claims and false statements made to "any corporation in which the United States of America is a stockholder," it worked other changes in the phrase-

[1] By the Act of May 30, 1908, c. 235, 35 Stat. 555, the penalty was reduced from a maximum of five years and a $5,000 fine to a maximum of two years and a $500 fine as applied to persons who purchased or received in pledge from a serviceman any article of issue which the serviceman had no lawful right to pledge or sell. There was nothing in this Act of 1908 which in any way altered the prohibitions of section 5438 against false claims and false statements.

[2] See Appendix, *infra*, pp. 31–34.

ology which are germane to this case. Thus, the amendment changed the second clause dealing with false statements relating to claims by adding to its already broad coverage the words:

> * * * or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall *knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations* * * *. [Emphasis added.]

It is significant that the italicized portion of this addition appears in the part of present section 1001 with which we are here concerned, and that this language related to any false statement or scheme in connection with any claim against the United States, no matter the federal official to whom presented. There can be no doubt that the 1918 statute, like the earlier legislation, covered false statements made to the Disbursing Office of the House of Representatives.

In 1934 Congress again expanded the statute, 48 Stat. 996, Appendix *infra*, pp. 34–36. The false-claims part continued the previous wording relating to claims against "the Government of the United States, or any department thereof." However, the language of trick or scheme and false statements, which in the 1918 Act referred to

false representations made "for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof", was altered to read false statements, tricks or schemes "in any matter within the jurisdiction of any department or agency of the United States." The failure of the 1934 false-statement clause to refer back to the preceding language relating to "claims" is without the significance attached to it by the trial court (see R. 12–13). The presence of the phrase "such claim" in the false-statement provision of the 1918 act had limited that provision to false statements made in connection with a false claim for money or property.[12] The 1934 deletion of this cross-reference between false statements and false claims simply reflects Congress' purpose to *broaden* the false-statement provision to include *non-monetary* frauds, such as those in connection with "hot oil."[13] There is no reason to believe that

[12] *United States* v. *Cohn*, 270 U. S. 339; *United States* v. *Gilliland*, 312 U. S. 86.

[13] The purpose set forth in Senate Report No. 1202, 73d Cong., 2d sess., was threefold: to provide penalties for willful injuries to or depredations against any property of the United States, "any of its branches or departments," or any corporation in which the United States is a stockholder; to reach cases involving the shipment of "hot oil," where false papers were being presented although not in connection with a "claim"; and, to reach those cases of contractors, paid for work done by them from the Public Works Administration, who filed false certificates as to actual wages paid.

the deletion of the phrase "such claim" was intended to narrow the scope of the coverage clause, which was no longer referable to the phrase "the Government of the United States, or any department or officer thereof." The omission of the term "such claim" necessitated an independent subject-matter description to show the coverage of the false-statement prohibition. The new phraseology, "in any matter within the jurisdiction of any department or agency of the United States," is not on its face narrower than its antecedent, and there is nothing in the committee reports [14] or the debate in Congress [15] to indicate that the new phrasing of the false-statement clause, resulting from technical drafting changes, was intended to leave the federal treasury unprotected from tricks or schemes which arose outside an executive agency. As pointed out above, false statements and tricks in connection with claims presented to any organ of the government had previously been made punishable. *Supra*, pp. 17–21. It would be anomalous to hold that, in an amendment designed to broaden the statute, Congress, *sub silentio*, narrowed its scope in relation to schemes and tricks affecting the federal treasury.

In the general revision of title 18 by the Act of June 25, 1948, the related prohibitions against false claims and false statements were separated

[14] S. Rep. No. 1262; H. Rep. No. 1453, 73d Cong., 2d sess.
[15] 78 Cong. Rec. 8136, 11270.

and given different section members.[18] The prohibitions against false claims, and conspiracy to file false claims, were renumbered sections 286 and 287; the prohibition against false statements was numbered section 1001. There is no evidence that Congress meant to change the scope of the respective prohibitions. That no such change was intended is shown by the continuation of the former phraseology, and fortified by the general rule of construction expressed by this Court in *United States* v. *Ryder,* 110 U. S. 729, 740, that "It will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." See also *Anderson* v. *Pacific Coast S. S. Co.,* 225 U. S. 187; *United States* v. *Sischo,* 262 U. S. 165; *Warner* v. *Goltra,* 293 U. S. 155; *Pott* v. *Arthur,* 104 U. S. 735, and *Stewart* v. *Kahn,* 78 U. S. (11 Wall.) 493.

It seems clear, as discussed above, that under the 1934 phraseology, from which present section 1001 stems, any scheme to cover up a material fact relating to the expenditure of monies of the United States would have been deemed a scheme "in a matter within the jurisdiction of a department or agency of the United States." The cases

[18] The Act of April 4, 1938, 52 Stat. 197, merely divided the section into three subsections and provided a lighter penalty for those who steal or destroy Government property whose value is less than $50. The scope of the false statement clause, made a part of section 35 (A), remained the same.

of *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, and *Romney* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, discussed in Point I, *supra*, pp. 14–17, support this view. Under these circumstances, section 6 of the 1948 Revision should not be read so narrowly as to change the design and purpose of section 1001 and to create an unforeseen and unintended result.

From its inception, the statute on which section 1001 is based has protected funds of the United States, no matter by what branch or unit of the federal government they are expended. The history of the statute has been one of constant expansion. The narrow interpretation of the court below is thus contrary not only to the language but to the historic development of the statute and the manifest Congressional intent.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court arresting the judgment should be reversed.

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DECEMBER 1954.

APPENDIX

Act of March 2, 1863 (c. 67, 12 Stat. 696):

> * * * any person in the land or naval forces of the United States, or in the militia in actual service of the United States, in time of war, who shall make or cause to be made, or present or cause to be presented for payment or approval to or by any person or officer in the civil or military service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; any person in such forces or service who shall, for the purpose of obtaining, or aiding in obtaining, the approval or payment of such claim, make, use, or cause to be made or used, any false bill, receipt, voucher, entry, roll, account, claim, statement, certificate, affidavit, or deposition, knowing the same to contain any false or fraudulent statement or entry; any person in said forces or service who shall make or procure to be made, or knowingly advise the making of any false oath to any fact, statement, or certificate, voucher or entry, for the purpose of obtaining, or of aiding to obtain, any approval or payment of any claim against the United States or any department or officer thereof; any person in said forces or service who, for the purpose of obtaining or enabling any other person to obtain from the Government of the United States, or any

department or officer thereof, any payment or allowance, or the approval or signature of any person in the military, naval, or civil service of the United States, of or to any false, fraudulent, or fictitious claim, shall forge or counterfeit, or cause or procure to be forged or counterfeited, any signature upon any bill, receipt, voucher, account, claim, roll, statement, affidavit, or deposition; and any person in said forces or service who shall utter or use the same as true or genuine, knowing the same to have been forged or counterfeited; any person in said forces or service who shall enter into any agreement, combination, or conspiracy to cheat or defraud the Government of the United States, or any department or officer thereof, by obtaining, or aiding and assisting to obtain, the payment or allowance of any false or fraudulent claim; any person in said forces or service who shall steal, embezzle, or knowingly and wilfully misappropriate or apply to his own use or benefit, or who shall wrongfully and knowingly sell, convey, or dispose of any ordnance, arms, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or to be used for the military or naval service of the United States; any contractor, agent, paymaster, quartermaster, or other person whatsoever in said forces or service having charge, possession, custody, or control of any money or other public property, used or to be used in the military or naval service of the United States, who shall, with intent to defraud the United States, or wilfully to conceal such money or other property, deliver or cause to be delivered to any other person having authority to receive the same any amount of such money

or other public property less than that for which he shall receive a certificate or receipt; any person in said forces or service who is or shall be authorized to make or deliver any certificate, voucher, or receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other public property so used or to be used, who shall make or deliver the same to any person without having full knowledge of the truth of the facts stated therein, and with intent to cheat, defraud, or injure the United States; any person in said forces or service who shall knowingly purchase or receive, in pledge for any obligation or indebtedness, from any soldier, officer, or other person called into or employed in said forces or service, any arms, equipments, ammunition, clothes, or military stores, or other public property, such soldier, officer, or other person not having the lawful right to pledge or sell the same, shall be deemed guilty of a criminal offence, and shall be subject to the rules and regulations made for the government of the military and naval forces of the United States, and of the militia when called into and employed in the actual service of the United States in time of war, and to the provisions of this act. And every person so offending may be arrested and held for trial by a court-martial, and if found guilty shall be punished by fine and imprisonment, or such other punishment as the court-martial may adjudge, save the punishment of death.

Revised Statutes, 1873–1874:

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval,

to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or

indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

Criminal Code (1909), 35 Stat. 1088:

SEC. 35. Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in any civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance or any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the

military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipment, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years.

Act of October 23, 1918 (c. 194, 40 Stat. 1015):

* * * Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or

any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, posses-

sion, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance,

shall be fined not more than $500 or imprisoned not more than two years, or both.

Act of June 18, 1934 (c. 587, 48 Stat. 996):

* * * Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, or any property which has been or is being made, manufactured, or constructed under contract for

the War or Navy Departments of the United States; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any

soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States, or furnished by the United States under such allowance, shall be fined not more than $500, or imprisoned not more than two years, or both.

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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT

v.

ERNEST KING BRAMBLETT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

In our main brief we have shown that the false-statements act (18 U. S. C. 1001), which prohibits false statements "in any matter within the jurisdiction of any department or ageney of the United States," protects the House Disbursing Office as well as all other federal disbursing agencies in all branches of the Government. Our conclusion, based on an examination of the meaning of the word "ageney" as used in the false-statements act, was buttressed by an examination of the history of Section 1001, which demonstrates

conclusively that the false-statements act was intended by Congress to protect against frauds against the federal revenue wherever occurring, and that the purpose of the successive amendments to that section has been to expand, and never to restrict, the scope of its application.

This reply brief deals with certain additional matters raised by the contentions of appellee.

I. CONGRESS HAS NEVER WITHDRAWN THE PROTECTION OF THE FALSE-STATEMENTS STATUTE FROM AGENCIES IN THE LEGISLATIVE BRANCH

This case involves a hard-core violation of the false-statements statute—the submission of false statements to a federal disbursing officer for the purpose of perpetrating a fraud upon the federal revenue.

Appellee concedes (Br. 19–20) that until 1934, or for a period of sixty-one years, Congress succeeded in protecting its own disbursing agencies from fraud through false statements. But appellee contends that in 1934 (Br. 20), or at least in 1948 (Br. 4–10), Congress withdrew this protection from all agencies of the legislative branch. The sweeping nature of this suggestion becomes apparent when it is considered that the agencies of the legislative branch include, in addition to the House and Senate Disbursing Offices, the Government Printing Office, the Library of Congress, the Architect of the Capitol, and, above

all, the auditing arm of the Congress, the General Accounting Office.[1] No direct evidence of any intent to make such sweeping changes is cited. Appellee relies rather on inferences drawn from the fact that in 1934 and again in 1948 Congress was explicit in describing the changes in the statute, and the matters to which the Congressional reports adverted happened to concern problems in the executive branch. On this flimsy basis appellee asks this Court to announce a repeal by implication of the false-statements statute insofar as it applies to all legislative agencies.

A. THE 1934 AMENDMENT

In 1934, Congress dropped from the false-statements statute the reference to claims and broadened it to cover "any matter within the jurisdiction of any department or agency of the United States." (See our main brief, 22–23.) As appellee recognizes (Br. 20), Congress was explicit in giving its reasons for this change. The revised language was intended to broaden its scope to cover, in addition to the hard-core monetary frauds, non-monetary frauds against the Government (*ibid.*). *United States* v. *Gilliland*, 312 U. S. 86. The reports and the debates also indicate that no changes other than those

[1] See United States Government Organization Manual 1954–1955, pp. 31–47. With respect to the status of the General Accounting Office, see further p. 19, *infra*.

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enumerated were intended.[2] There is therefore no warrant for appellee's extraordinary and internally inconsistent assertion that Congress "wanted to *restrict* the operation of the new statute to the only branch of the government which was then demanding *additional* protection against fraud" (Br. 21). [Emphasis added.]

B. THE 1948 CODIFICATION OF THE CRIMINAL CODE

Appellee further argues that this Court must hold that Congress has withdrawn the protection of the false-statements statute from the legislative agencies, because of the definition of the word "agency" which is included in the 1948 Criminal Code (Br. 2–10).

In this connection appellee stresses and reiterates the fact that the word "agency," as used in the Criminal Code, was intended to embrace all of the various instrumentalities of the executive branch (Br. 4–10). Of course it does. There is no dispute about this. The revisers' notes make this clear.

But it is quite another thing to assert, as does appellee (Br. 10), that the revisers have "unequivocally stated that the signification of the term 'agency' is *limited* to the executive branch of the government alone." [Emphasis added.] The revisers' notes may be searched in vain for

[2] S. Rep. No. 1202, 73d Cong., 2d Sess., p. 1; H. Rep. No. 1463, 73d Cong., 2d Sess., pp. 1–3; 78 Cong. Rec. 8136–8137, 11270.

any indication that the revisers intended to restrict or confine the meaning of the word "agency" in any way. On the contrary, their explicit purpose was to assure that the word embraced Government-owned and -controlled corporations. See, *e. g.*, note following 18 U. S. C. 201. Had there been any purpose to restrict the meaning of "agency" to establishments in the executive branch of the Government, this would affirmatively appear. We are confident of this, because Mr. W. W. Barron, the chief reviser, explained in his testimony in support of the revision that:

> Every substantive change, no matter how minor, is fully explained so that if you in your discretion see fit to make these notes part of your report, they will adequately serve to interpret every proposed change.[3]

The revisers' notes were in fact made a part of the Congressional reports and the reports reiterate that the revisers' notes explain in detail every change made.[4] Nor would the removal of the protection of the false-statements statute from monetary violations affecting the legislative branch have been in any sense a minor change. If either the revisers or Congress had intended

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[3] Hearings before the Committee on Revisions of the Laws, House of Representatives, 68th Cong., 2d Sess., on H. R. 5450, December 6, 1944, p. 11.

[4] H. Rep. 304, 80th Cong., 1st Sess., p. 9; see also S. Rep. 1620, 80th Cong., 2d Sess., p. 1.

to remove the protection of this statute from the General Accounting Office, the Government Printing Office, the Library of Congress, the Architect of the Capitol, and the disbursing agencies of Congress, they certainly would have made that intention clear. Indeed, it cannot be that Congress effected such a sweeping change in the law *sub silentio*, when at the same time it announced in its reports that *every* change made in the revision was spread upon the record.

Nor does an examination of the statutory language in context or out of context require this Court to frustrate the manifest intent of Congress.

The revisers added two definitions to apply generally to the Criminal Code. 18 U. S. C. 6. The first, covering the word "department," is restrictive:

> The term "department" *means* one of the executive departments * * * unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government. [Emphasis added.]

The fact that the revisers used a verb of restriction and then added a proviso noting that the word "department" might refer to the legislative and the judicial branches, as well as the executive branch, should be noted.

But when, in the next paragraph, the revisers defined the more general term "agency," they

carefully avoided use of any term of restriction and instead provided that:

> The term "agency" *includes* any department, independent establishment, commission. . . . [Emphasis added.]

As this Court has many times had occasion to note, the verb "includes" is not one of limitation. Particularly when used in apposition to the verb "means," the word "includes" "cannot reasonably be read to be the equivalent of 'shall mean' or 'shall include only.'" *American Surety Co.* v. *Marotta*, 287 U. S. 513, 517. "The protection [of an act of Congress] cannot thus be frittered away." *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 99–100. See *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 188–189; *Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 125, note; *Harris* v. *State*, 175 So. 342, 343–344 (Miss.).

"Agency" is defined as the all-inclusive word. The structure of the two definitions indicates that in the definition of "agency" Congress intended to expand, not to restrict, to include, not to exclude. This becomes manifest when it is noticed that in every instance in the Code where Congress has restricted the word "agency" to instrumentalities "in the executive branch", it has used the verb "means". See definitions quoted in appellee's brief, pp. 11–13.[5] On the

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[5] See further, 5 U. S. C. 133z–5; 31 U. S. C. 65a; 40 U. S. C. 472 (a); 50 U. S. C. (App.) 458e; 50 U. S. C. (App.) 1213

other hand, in instances where Congress has intended the definition of "agency" to embrace governmental agencies generally, it has provided, as in the Criminal Code, that the word "agency" "includes" the enumerated instrumentalities. *E. g.*, 28 U. S. C. 451 (Judicial Code); 28 U. S. C. 2671 (Tort Claims Act). It is obvious that the definition in the Judicial Code (which is identical to that in the Criminal Code) was intended to include legislative agencies. See, *e. g.*, 28 U. S. C. 1358 (eminent domain); 28 U. S. C. 1733 (Government records). The definition of "agency" in the Tort Claims Act has specifically been held by the Comptroller General to embrace legislative agencies. 26 Comp. Gen. 891.

Where then is it "unequivocally stated that the signification of the term 'agency' is *limited* to the executive branch of the government alone"? The Court will find this only in appellee's brief (Br. 10).

It does not assist appellee's position to point out that where Congress intended certain Code provisions to apply to Congress or its committees as such, it has in certain instances, such as in the statutes relating to bribery and to influencing witnesses (Appellee Br. 10–11), referred both to agencies and to Congress. This language is neces-

(1). Cf. 40 U. S. C. 57a; 40 U. S. C. 304e; 42 U. S. C. 1522; 42 U. S. C. 1592n. In instances where Congress has limited the meaning of "agency" in other respects, it has similarly used the verb "means". See 5 U. S. C. 1001; 40 U. S. C. 472 (b); 42 U. S. C. 1814.

sary to embrace these legislative activities. As we have been at pains to state, we do not suggest that the word "agency" embraces the legislative functions of Congress (Govt. Main Br. 10, n. 2). We insist only that it covers the disbursing agencies of Congress and other agencies in the legislative branch, which, as we spell out below, have uniformly been regarded as agencies by the Congress and the legislative and executive agencies which deal with them.

Nor is it persuasive (Appellee Br. 11–13) that in provisions of the Code which apply only to activities of the executive branch, such as Title 5, which covers the executive departments, or chapters relating to the Foreign Service (22 U. S. C. 802), termination of war contracts (41 U. S. C. 103), atomic energy (42 U. S. C. 1818), disaster relief (42 U. S. C. 1855a), or the Federal Register (44 U. S. C. 304), Congress has defined the word "agency" to mean departments, commissions, establishments, etc., "in the executive branch of the Government." These do not show that "Congress does not employ [the term "agency"] when it wants to describe a legislative or judicial officer" (Appellee Br. 11). On the contrary, these instances suggest that when Congress intends that the word "agency" should not have its usual meaning, but should be restricted to agencies in the executive branch, it so expressly provides. Indeed, in certain sections of the Code applicable to all three branches of

the Government, Congress has explicitly used the word "agency" to describe agencies in the legislative branch. See, *e. g.*, 31 U. S. C. 67 (a), 67 (b), 65b, 66d, which concern the auditing of accounts of, *inter alia*, "legislative agencies," and 40 U. S. C. 472 (b) relating to the chapter of the Code which provides for the management and disposal of Government property.[6]

Finally, appellee contends that this Court should discover a Congressional intent to limit the false-statements statute to agencies of the executive branch in order to avoid "superseding the perjury laws by a new statute which covered false statements made to any branch of the federal government" (Br. 21, 15–16, 18). This is not an issue presented by the facts of this case. Statements submitted to the House Disbursing Office, like the clerk-hire forms on which this case is based, are not sworn. These statements are

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[6] Inclusion of the designation "legislative" before "agency" in 31 U. S. C. 67 (a), 67 (b), etc., was indicated, owing to the restrictive definitions in other sections of Title 31. See n. 15, *infra*.

40 U. S. C. 472 (b) provides:

> The term "Federal agency" means any executive agency or any establishment in the *legislative* or judicial *branch* of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol . . .). [Emphasis supplied.]

Congress was obviously excluded from the above definition inasmuch as the Architect of the Capitol is otherwise responsible for the acquisition and disposition of Government property at the Capitol. See, *e. g.*, 40 U. S. C. 162, 166c, 169–171, 174e, 175, 186.

covered by the false-statements statute and not by the perjury statute. On the other hand, we do not suggest that the false statements statute reaches any of the legislative activities of Congress. Thus, no question of overlap is involved here. And even if it were, that would not be a reason for reading out of the false claims statute offenses which fall plainly within its terms. In *United States* v. *Noveck*, 273 U. S. 202, this Court rejected the contention that the enactment of Section 145 (b) of the Internal Revenue Code impliedly repealed the general perjury statute insofar as that statute applied to false tax returns made under oath. And in *United States* v. *Beacon Brass Co.*, 344 U. S. 43, this Court held that an indictment under Section 145 (b) was valid, notwithstanding the fact that the making of false statements, charged in the indictment, also spelled out a violation of the general false-statements statute involved in the instant case. See further, *United States* v. *Gilliland*, 312 U. S. 86, 95–96.

II. CONGRESS AND THE COURTS HAVE UNIFORMLY REGARDED THE CONGRESSIONAL DISBURSING OFFICES AS AGENCIES OF THE UNITED STATES GOVERNMENT

This case is not the first to involve frauds against the disbursing agencies of Congress. It is the third in sixty-four years to put the status of

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the House disbursing agencies before the courts. In each of the previous cases, the courts held that the House disbursing agencies were subject to the same legislation as all other disbursing agencies of Government. These cases are discussed at length in this brief, however, for a reason which is even more important to the present issue. Each of the previous defalcations provoked new and additional legislation designed to prevent a recurrence of the fraud. This legislation in the aftermath of "fraud within the temple" demonstrates with force and clarity that Congress itself regards its disbursing offices as agencies of the United States Government.

A. THE SILCOTT DEFALCATION—1889

As of November 1889, it had been the long-continued practice of Members of the House, prior to vacation, to leave with the Sergeant at Arms signed receipts covering their pay which would become due month by month. Each month the Sergeant at Arms would present these receipts to the Treasury, withdraw the funds called for, and deposit the funds to the credit of the Members or forward it to them as directed. In 1889, after the money covering the Congressional payroll for November had been withdrawn from the Treasury, one Silcott, a cashier in the office of the Sergeant at Arms, absconded with most of it.

The question arose: who was to bear the loss—the Treasury or the Congressmen concerned? It

came to issue in a test suit brought by Congressman Crain against the United States in the Court of Claims. *Crain* v. *United States*, 25 Ct. Cls. 204. The issue turned on a question closely akin to the question involved in this case. Was the office of the Sergeant at Arms an agency of the United States, or was the Sergeant at Arms in the performance of his fiscal duties the private agent of the members? (*id.* 221). The Clerk of the House, whose fiscal duties were at that time the same as they are today, was recognized by all concerned as a public agent because of existing statutory recognition of his status as a disbursing officer of the United States (*id.* 232–233). The defense, however, invoked broad considerations of the Constitutional separation of powers in contending that the Sergeant at Arms, absent comparable statutory authorization, could not be considered a fiscal agent of the Government (*id.* 215). But the Court of Claims had no difficulty concluding, on the basis of established usage "in a matter so immediately within the personal knowledge and direct observation of members of Congress" (*id.* 233), that the Sergeant at Arms was a fiscal agent of the United States and that accordingly the United States was responsible for the loss which had occurred in his office.

Congress did not repudiate this decision. On the contrary, it moved promptly to supply legislation explicitly providing that the Sergeant at Arms "shall be a disbursing officer" (26 Stat.

645, 2 U. S. C. 80). When this bill was before the House, one member observed that this bill made the Sergeant at Arms "a civil officer of the United States," and that in view of the Constitutional separation of powers he ought to be regarded solely as an officer of the House. He added, in a remark which has an air of the prophetic in view of appellee's argument in the instant case, that unless such a distinction were made "there may be some difficulty in the Executive Departments, or possibly in the courts."[1] But the bill passed, the House obviously recognizing that the fiscal functions of its disbursing officers were separate and distinct from their other duties as officers of the House and appropriately a part of the "Treasury system itself" (21 Cong. Rec. 163).

A few weeks before this debate, in legislation which may have been prompted by the Silcott defalcation, Congress had provided that "all disbursing officers of the United States shall render their accounts quarterly" to the Treasury. Act of Aug. 30, 1890, c. 837, 26 Stat. 413; cf. 31 U. S. C. 497. Since that date the Clerk and the Sergeant at Arms have regularly submitted their accounts for audit. Until 1921 they were sub-

[1] 21 Cong. Rec. 1045O; see further 21 Cong. Rec. 162–164; H. R. Misc. Doc. 55, 51st Cong., 1st Sess., pp. 8–9 (Treasury view), 45–51.

mitted to the Treasury; since that date they have been submitted to the General Accounting Office.*

B. THE ROMNEY DEFALCATION—1946

At the close of 1946, with a change in the administration of the House about to take place, another scandal broke upon the office of the House Sergeant at Arms. It appeared that since 1925, one Romney, who had been cashier and since 1931 Sergeant at Arms, had carried as "cash on hand" various uncollectible checks and memoranda of debt covering moneys unlawfully loaned to various Congressmen and moneys embezzled by Romney and a former subordinate. As of December 31, 1946, the shortage totalled more than $143,000.

Romney had regularly submitted his account current to the General Accounting Office, including, for purposes of the report, the amount of the then existing shortage in "Cash on hand". Romney was indicted under the false-statements statute (Act of June 18, 1934, c. 587, 48 Stat. 996; quoted main brief, p. 34). The indictment charged that he knowingly and wilfully "made a false and fraudulent statement and representation in a matter within the jurisdiction of the General Accounting Office, an agency of the United

* See *Romney v. United States*, 167 F. 2d 521, 523 (C. A. D. C.), certiorari denied, 334 U. S. 847. The General Accounting Office was substituted for the Treasury by the Act of June 10, 1921, c. 18, 42 Stat. 23–24, 31 U. S. C. 41–42.

States." [9] After conviction by a jury, Romney appealed. His arguments on appeal were reminiscent of those made in the earlier *Crain* case. Romney contended that as an officer of the House he was not required by law to submit an account current to the General Accounting Office, and that in any event he was not required to submit a report on this cash on hand since he held it as private banker for the members of the House and not as a United States fiscal officer. *Romney* v. *United States*, 167 F. 2d 521, 524 (C. A. D. C.), certiorari denied, 334 U. S. 847. The Court of Appeals, after examining the relevant statutes,[10] held that Romney, as Sergeant at Arms, was under a legal duty to submit his accounts current to the General Accounting Office (167 F. 2d at 524–525). It further held, citing *Crain* v. *United States*, discussed *supra*, that inasmuch as Romney was a "disbursing officer" money in his hands continued to be the property of the Government until it was actually disbursed to the persons lawfully entitled to receive it (*id.* 526–527). The court noted in this connection that Romney was required to give bond to the United States conditioned on "the faithful keeping, application, and

[9] See Record in No. 753, O. T. 1947, *Romney* v. *United States*, pp. 385–386.

[10] R. S. 3622, as amended, 31 U. S. C. 496; Act of Oct. 1, 1890, c. 1256, 26 Stat. 645–46, 2 U. S. C. 78, 80, 82; Act of July 31, 1894, c. 174, 28 Stat. 206, as amended, 31 U. S. C. 72; Act of August 30, 1890, c. 837, 26 Stat. 413, as amended, 31 U. S. C. 197.

disbursement of such moneys as may be drawn from the Treasury and paid to him as disbursing officer of the United States"[3] (*id.* 526). The court thus gave renewed recognition to the status of the Congressional disbursing offices as fiscal agencies of the United States Government. It further necessarily held that the General Accounting Office was an agency of the Government within the meaning of the false statements statute.

Appellee urges this Court to ignore the *Romney* case as a precedent for three reasons (Br. 14–15).

In the first place, appellee argues, the question whether the General Accounting Office was an agency of the United States was not discussed by the Court of Appeals. But the Court of Appeals called it an "agency" (see, *e. g.*, 167 F. 2d at 524). Indeed, there can hardly be better evidence of the accepted meaning of the word than the fact that neither the Court of Appeals nor the parties should have considered that the General Accounting Office, an agency of the legislative branch, could be anything other than an "agency" within the meaning of the false-statements statute. Moreover, both sides mooted in the Court of Appeals and in the petition and brief in opposition in this Court the subsidiary question whether the internal operations of the Sergeant at Arms' Office, conducted for the convenience of members with funds due them but not yet paid, was "any

[3] See 2 U. S. C. 82.

matter within the jurisdiction of any department or agency of the United States."[12] While the Court of Appeals did not discuss the issue in these terms, the court held, as we have noted, that the funds in his hands consisted of public moneys for which Romney was required to account in his periodic reports to the General Accounting Office (*Id.* at 525–527).

In the second place, appellee argues that Title 18, with its definition of "agency," did not go into effect until after the *Romney* case was decided. True, but as we have shown above (p. 4 *et. seq.*), there is nothing in the revision indicating any purpose on the part of Congress to restrict the meaning of the word "agency" in the new Code. Moreover, as we show below, the action of the House after the *Romney* affair shows conclusively that it continued to consider its disbursing officers to be agencies of the United States.

Finally, appellee himself recognizes the absurdity of imputing to Congress an intent to remove the protection of the false-statements statute

[12] Brief for Appellant in No. 9561, *Romney* v. *United States* (C. A. D. C.), pp. 15–16; Brief for Appellee, pp. 18–23.

Petition for certiorari in No. 753, O. T. 1947, *Romney* v. *United States*, pp. 18–19. Thus, in his petition Romney argued: "There being no law authorizing 'The House Bank' it therefore follows that the misapplications involved in this cause were not 'in any matter within the jurisdiction of any department or agency of the United States.'" The Government explicitly answered this contention in its brief in opposition at pp. 10–12.

from its own auditing arm, the General Accounting Office. Thus, appellee notes that the General Accounting Office "partakes of the nature of an executive instrumentality," and suggests that "the courts might well conclude" that it should be considered an agency for purposes of the false-statements statute (Br. 14–15). But appellee goes on to suggest, in order to accommodate his theory that the false-statements statute applies *only* to agencies in the executive branch, that although the General Accounting Office is independent of the executive departments (31 U. S. C. 41), "this does not mean that it is outside the *executive branch* of the government" (Appellee Br. 15; emphasis in original). He omits to note, however, that Congress has declared in words as clear as words can be that the "General Accounting Office [is] a part of the legislative branch of the Government" (5 U. S. C. 133z–5).[18]

The *Romney* case, of course, involved subject matter within the intimate knowledge of Congress, and accordingly set in motion a variety of remedial measures. As a starter, the General Accounting Office was asked to make a detailed on-the-site audit.[19] See 95 Cong. Rec. 9475. Then,

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[18] United States Government Organization Manual 1954–1955, pp. 111, 34; H. Rep. 2556, 81st Cong., 2d sess., pp. 16–17.

[19] Previously, the General Accounting Office has merely audited the "accounts current" of the office. The on-the-site audit involved in addition a count of cash on hand, verification of all receivables, etc. See H. Rep. 500, 80th Cong., 1st Sess., p. 1; H. Rep. 2556, 81st Cong., 2d Sess., p. 11.

Congress appropriated funds to make up the shortage as reported by the General Accounting Office. 61 Stat. 610, see *Romney* v. *United States*, 167 F. 2d at 527. In addition, the House authorized the Sergeant at Arms to purchase insurance out of the contingent fund to protect against future losses. H. Res. 167, 80th Cong., 1st Sess., 93 Cong. Rec. 2971.

At the same time, a bill was introduced providing for a "periodic audit by the Comptroller General of all the accountable officers of the legislative branch." In its report recommending passage of the bill, the House Committee on Expenditures noted that certain officers and employees at the Capitol "because they receive public money which they are 'not authorized to retain as salary, pay, or emolument' (quoting 31 U. S. C. 496) are accountable therefor." H. Rep. 500, 80th Cong., 1st Sess. (to accompany H. R. 3138), p. 1. H. R. 3138 was passed by the House (93 Cong. Rec. 7085), but died in the Senate. The 81st Congress, however, at its first session provided for a periodic audit of the accounts of the House Sergeant at Arms (2 U. S. C. 62b, see 95 Cong. Rec. 9475), and in the Budget and Accounting Procedures Act of 1950 (Act of Sept. 12, 1950, c. 946, Sec. 117, 64 Stat. 837, 31 U. S. C. 67 (a)) provided generally that:

> the financial transactions of each executive, *legislative*, and judicial *agency* (including but not limited to the accounts of ac-

> countable officers, shall be audited by the General Accounting Office . . . [Emphasis added.][15]

In the House report relating to the Act, the word "agencies" alone is used to refer to the "executive, legislative, and judicial agenc[ies]" covered by the Act. See, *e. g.*, H. Rep. 2556, 81st Cong., 2d Sess., p. 13. The General Accounting Office has regularly audited the accounts of the House Disbursing Office pursuant to these provisions of law (R. 25).

In other words, while appellee was a member of Congress, and at a time when the attention of Congress was focused on providing additional protection for its disbursing agencies against fraud, Congress described the House Disbursing Office, including the Clerk and the Disbursing Clerk, both of whom are "accountable officers," as a "legislative *agency*."

In the light of the foregoing, the conclusion is inescapable that Congress, at least since its atten-

[15] The same phraseology is used in other provisions of the Act. See, *e. g.*, 31 U. S. C. 65b, 66d, 67 (b). The words "executive, legislative, and judicial agency" were undoubtedly used instead of the general, all-inclusive word "agency" because the Act itself contained a definition of "executive agency" (31 U. S. C. 65a). They were desirable, in addition, because 31 U. S. C. 2 defines "department or establishment" for purposes of chapter 1 of Title 31 to "*mean* any executive department, independent commission, board, bureau, office, *agency*," etc. but *not* to include "the *legislative branch* of the Government or the Supreme Court of the United States" (emphasis added).

tion was focused on the matter in 1890, has regarded its disbursing offices as agencies of the fiscal service of the United States and has subjected them to all the laws and given them all the protection accorded to all other fiscal agencies of the Government. Indeed, the members of Congress would undoubtedly be astounded at appellee's suggestion that in 1948, while they were actively working on legislation to protect against future frauds on Congress' own disbursing agencies, they silently withdrew the protection of the false-statements statute which those agencies had enjoyed since 1873.

III. ADMINISTRATIVE PRACTICE CONFIRMS THE FACT THAT THE HOUSE DISBURSING OFFICE IS AN AGENCY OF THE UNITED STATES

Appellee asserts that it requires a "fabricated definition" of the word "agency" to include the House "Disbursing Office but not congressional committees" (Br. 16). We have shown that this assertion ignores the fact that Congress itself regards its disbursing offices as agencies of the United States. In the day-to-day operations of Government, moreover, the House Disbursing Office (or the Clerk) is referred to and dealt with as an agency of the United States.

Thus, the Clerk of the House, in the discharge of his fiscal responsibilities, is known as the "House Disbursing Officer" (R. 24; cf. 2 U. S. C. 80 (House Sergeant at Arms); 2 U. S. C. 61 (Secretary of the Senate)). His assistant, who

is in active charge of the fiscal section of the Clerk's office, is known as the Disbursing Clerk (2 U. S. C. 75a; R. 24–25). The office itself is known as the House Disbursing Office, and this designation appears on its printed forms, such as the clerk-hire form involved in this case (R. 24).

Both the Clerk and the Disbursing Clerk are required to file with the Secretary of the Treasury a bond in the amount of $20,000 payable to the United States, conditioned on the faithful performance of their fiscal duties (2 U. S. C. 75, 75a). The Secretary of the Treasury approves the sureties, and may require the renewal or strengthening of the bonds at any time (6 U. S. C. 1–3). The cost of the bonds is paid by the Clerk and the Disbursing Clerk personally, and not by the House (6 U. S. C. 14).

Congress appropriates the moneys to be disbursed according to law by the Clerk (see, *e. g.*, General Appropriation Act, 1951, 64 Stat. 599–600), who is subject to fiscal regulations of the Secretary of the Treasury (5 U. S. C. 255; 31 U. S. C. 66b; see 31 C. F. R. ch. II, "Fiscal Service," Department of the Treasury). Funds appropriated are placed to the Clerk's credit, subject to his official check (R. 25) with the Treasurer of the United States (31 C. F. R. 208.1); checks drawn by the Clerk must state the purpose for which they are drawn (31 C. F. R. 208.6); the Clerk is supplied a monthly statement of his account (31 C. F. R. 208.10); the care and custody of blank checks and the use of the Clerk's

symbol number are subject to the provisions of 31 C. F. R. 208.13 (see R. 25 96); and the indorsement and payment of checks issued by the Clerk on the Treasury, including limitations of time for payment, are governed by the provisions of 31 C. F. R. 360–360.9. The Secretary of the Treasury annually submits to Congress a "Combined Statement of Receipts, Expenditures and Balances of the United States Government," required by 5 U. S. C. 265, which includes, *inter alia*, an analysis of the accounts of the Clerk. See, *e. g.*, Combined Statement for year ended June 30, 1954, pp. 90–92.

At least since 1890, the accounts of the House Clerk have been subject to independent audit. Since the establishment of the General Accounting Office, this function has been performed by that office (see R. 25). In the Budget and Accounting Procedures Act of 1950, provision was made for a more extensive audit, including on-the-site audits, of all legislative agencies, including the House Disbursing Office (31 U. S. C. 67, 65b, 66d; see H. Rep. 2556, 81st Cong., 2d Sess., pp. 13–14). Like other disbursing officers, the House Clerk can seek advance rulings on any question involving a payment to be made, which decision is thereafter binding on the General Accounting Office (31 U. S. C. 74). The Clerk has frequently availed himself of this privilege (see, *e. g.*, 2 Comp. Gen. 45; 22 Comp. Gen. 570; 27 Comp. Dec. 743; 27 Comp. Dec. 766). In sum, he is

treated and acts as a normal governmental fiscal agency.

Indeed, the word "agency" itself is commonly used to describe Government disbursing agencies, including the Clerk of the House.

Treasury Department circular No. 868 (Rev.), issued June 26, 1952, is addressed, *inter alia*, to "agencies of the Government," and applies principally to disbursing officers not in the executive branch of the Government. It requires all disbursing officers covered by the regulation, including the Clerk of the House, to furnish the Treasury Department a legible, signed copy of their accounts current. As Mr. Magill, Administrative Assistant to the Clerk of the House, testified in the instant case, the Clerk of the House "submits his account current to the General Accounting Office, and for information under a recent budget law he sends a copy of that to the Treasurer of the United States" (R. 25).

Treasury Department circular No. 940, issued February 17, 1954, contains instructions for the preparation and submission of certain reports "required of each *disbursing agency* of the Federal Government" (p. 1). Pursuant to this regulation, the Clerk of the House submits monthly to the Treasury Department form No. 584, "Report of receipts, payments, and related cash transactions." The first line of this report is captioned "department or agency reporting." The Clerk enters in the blank space "Clerk of the House of Representatives," followed by the sym-

bol number assigned by the Treasury Department for the account covered by the report.

General Accounting Office Form DA–2087, "Statement of Exceptions Outstanding" (revised 8–1–52), is captioned with blanks to be filled in by the General Accounting Office to show "accountable officer" and "department or agency." This form is sent quarterly (whenever exceptions are outstanding) to all agencies subject to fiscal supervision by General Accounting Office, including agencies in the legislative branch.

In sum, the Clerk, in his fiscal capacity—that is, the House Disbursing Office—is treated by all concerned, and acts, as one of the fiscal agencies of the United States, no different from any other governmental agency. It is clear that when in our main brief we spoke of the administrative and fiduciary functions of the Clerk (Br. 10), we were not "fabricating" any definition, but were referring to the established character of the House Disbursing Office.

IV. NO CANON OF CONSTRUCTION REQUIRES THAT THE WORDS OF A CRIMINAL STATUTE BE GIVEN THEIR NARROWEST POSSIBLE MEANING, CONTRARY TO THE PLAIN INTENT OF CONGRESS

We have no quarrel with appellee's statement that penal statutes should be strictly construed. And we do not contend that Section 1001 applies to false statements made to the House Disbursing Office simply because they are "as deserving of condemnation as false statements made to an

executive officer" (Appellee Br. 25). The cases cited by appellee, therefore, are not in point.

Appellee asks this Court to repeal by implication the protection of the false-statements statute which he concedes Congress afforded its own disbursing agencies until 1934. He asks the Court to do this, notwithstanding the total absence of any affirmative evidence that Congress intended to accomplish this result and in the face of abundant evidence to the contrary.

Of course, the word "agency" could be used to describe agencies in the executive branch only. In a number of sections of the Code, Congress has done just that and explicitly limited the meaning of the word "agency" to agencies "in the executive branch." Instances are cited at p. 9, *supra*. In the false-statements statute, however, Congress has used the word without any such qualification under circumstances which indicate, we think conclusively, that the word was intended to cover, as the statute states, "any * * * agency of the United States" (18 U. S. C. 1001). No canon of construction requires that the words of a criminal statute be given their narrowest possible meaning. "There is no canon against using common sense in reading a criminal law, so that strained and technical constructions do not defeat its purpose by creating exceptions from or loopholes in it." *Kordel* v. *United States*, 335 U. S. 345, 348–349. Penal laws are not to be construed so strictly as to defeat the obvious intent of the

624, 628; *United States* v. *Alpers*, 338 U. S. 680; *United States* v. *Corbett*, 215 U. S. 233; *United States* v. *Brown*, 333 U. S. 18, rehearing denied, 333 U. S. 850. Thus Mr. Justice Story, said, in an oft-quoted passage[16] from his opinion on circuit in *United States* v. *Winn*, 3 Sumn. 209, 28 Fed. Cas. No. 16,740 (C. C. D. Mass.):

> I agree to that rule in its true and sober sense; and that is, that penal statutes are not to be enlarged by implication, or extended to cases not obviously within their words and purport. But where the words are general, and include various classes of persons, I know of no authority, which would justify the court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them. *And where a word is used in a statute, which has various known significations, I know of no rule, that requires the court to adopt one in preference to another, simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word.* In short, it appears to me, that the proper course in all these cases, is to search out and follow the true intent of the legislature, and to adopt that sense of the words, which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature. [Emphasis supplied.]

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[16] See, e. g., *Johnson* v. *So. Pacific Co.*, 196 U. S. 18.

Cf. *Steele* v. *United States No. 2*, 267 U. S. 505; 40 Op. A. G. 294.

The primary object of the false-statements statute was and is the protection of funds which the United States holds in public trust. Its provisions from its inception were broad and sweeping and its history has been one of constant expansion. The very comprehensiveness of the language used indicates an effort on the part of Congress to make the remedy as broad as the evil. The discussion of Chief Justice Hughes writing for the Court in *United States* v. *Gilliland*, 312 U. S. 86, is apposite. There the Court rejected the contention that the false-statements statute as amended in 1934 (see pp. 3–4, *supra*) should be "restricted by construction so as to apply only to matters of a nature similar to those with which other provisions [of the false-statements statute] deal * * * that is, to matters in which the Government has some financial or proprietary interest," and explained (*id.* 93):

> The statute [by the 1934 amendment] was made to embrace false and fraudulent statements or representations where these were knowingly and willfully used in documents or affidavits "in any matter within the jurisdiction of any department or agency of the United States." In this, there was no restriction to cases involving pecuniary or property loss to the government. The amendment indicated the congressional intent to protect the authorized functions of governmental departments and

agencies from the perversion which might result from the deceptive practices described. We see no reason why this apparent intention should be frustrated by construction.

The rule of *ejusdem generis* is a familiar and useful one in interpreting words by the association in which they are found, but it gives no warrant for narrowing alternative provisions which the legislature has adopted with the purpose of affording added safeguards. "The rule of '*ejusdem generis*' is applied as an aid in ascertaining the intention of the legislature, not to subvert it when ascertained." *Texas* v. *United States*, 292 U. S. 522, 534.

If the language of the amended section could be deemed ambiguous, the legislative history of the amendment would dispel any doubt as to the congressional purpose.

So here, we think that the language of present 18 U. S. C. 1001 is clear. But if it could be deemed to be ambiguous, as urged by appellee, the legislative history of the false-statements statute and the Congressional and administrative practice with respect to the House Disbursing Office "would dispel any doubt as to the congressional purpose."

It is often said that the rule of strict construction derives from "the purpose fairly to apprise men of the boundaries of the prohibited action."[9] Here, there can be no suggestion that

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[9] *See Kordel* v. *United States*, 335 U. S. 345, 349.

appellee did not have fair warning that it was unlawful to submit false statements to the House Disbursing Office. In 1948, Romney, then Sergeant at Arms of the House, was convicted of submitting false statements to the General Accounting Office, an agency of the legislative branch. This was a notorious event. Appellee was a member of the House at that time, and participated in the corrective legislation in which Congress once again recognized the status of their disbursing officers as fiscal agencies of the Government and indeed referred to them as "legislative agencies." But appellee now insists that Congress in 1934, or at least in 1948 (he is not sure which), withdrew the protection of the false-statements statute from not only the House Disbursing Office, but from all other legislative agencies as well. No rule of strict construction would permit or require the Court so to frustrate the plain intent of Congress.

Respectfully submitted.

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